

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Civil Action No.: 04-11939-JGD

MICHAEL J. WHALON,

Plaintiff,

v.

CHRISTY'S OF CAPE COD, LLC,

Defendant.

**BRIEF JOINT STATEMENT**

Plaintiff Michael J. Whalon ("Whalon") and Defendant Christy's of Cape Cod, LLC ("Christy's") (collectively, "the Parties") jointly submit this Statement pursuant to the Court's Order of October 6, 2005 rescheduling the Status Conference in this matter.

As of this date, the Parties can report the following:

Status of the Case: Fact discovery is ongoing. The Plaintiff's deposition has been completed, subject to the defendant's receipt of signed interrogatories. The deposition of Patrick McKeown, Executive Vice President of Defendant Christy's of Cape Cod, LLC, has commenced on November 8, 2005, and is scheduled to be continued on November 17, 2005. The Parties have completed Initial Disclosures and have exchanged written discovery, including Interrogatories and Requests for Production of Documents. The Plaintiff has provided a response to Defendant's Request for Production of Documents, and is finalizing Answers to the Defendant's Interrogatories. The Defendant has provided Plaintiff with signed Interrogatories and documents responsive to Plaintiff's First Request for Production of Documents.

1. Scheduling Remainder of the Case: The Parties continue to believe that the phased discovery program established by the Court at the initial Scheduling Conference is desirable, although the dates with respect to the completion of fact discovery and disclosure of experts may need to be adjusted at the Status Conference to permit for additional depositions, and the production of medical records and/or depositions of the Plaintiff's treating physicians. The Parties will confer prior to the Conference, and will be prepared to submit their respective (or agreed upon) positions with respect to modification of the current Scheduling Order.

Additionally, the Court is reminded that the Scheduling Order in this case was designed by the Court to permit an early assessment of the case, and for this reason does not extend beyond the disclosure of expert reports. The Parties submit that, following completion of Mr. McKeown's deposition, the Parties should be in a better position to decide upon the use of mediation or another ADR mechanism. If ADR is not used at this point in the case, the Parties submit that it would now be appropriate for the Court to expand the Scheduling Order to include dates for Summary Judgment Motions, Pretrial Conference, and Trial. Again, the parties will confer prior to the Conference, and will be prepared to submit their respective (or agreed upon) positions with respect to these dates.

2. Use of Alternative Dispute Resolution Programs: The Parties continue to discuss the possible use of Alternative Dispute Resolution programs, most notably mediation. Neither party has rejected the possibility of ADR as a mechanism of resolving this case. Both parties, however, believe that additional fact discovery needs to be completed prior to any meaningful discussion on the use of ADR.

Dated: November 14, 2005

Respectfully submitted.

For the Plaintiff:

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